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SERVICE DATE – NOVEMBER 1, 2012

## SURFACE TRANSPORTATION BOARD

### DECISION

Docket No. EP 714

#### INFORMATION REQUIRED IN NOTICES AND PETITIONS CONTAINING INTERCHANGE COMMITMENTS

Digest:<sup>1</sup> An interchange commitment is a contractual clause that limits the incentive or ability of the purchaser or lessee of a rail line to interchange traffic with carriers other than the seller or lessor. The Board's rules require that a party filing a notice or petition for exemption disclose the existence of an interchange commitment. The Board is announcing proposed rules that would require such parties to include additional information about the interchange commitments in their filings. The proposed new rules are set forth in Appendix A to this decision.

Decided: October 29, 2012

AGENCY: Surface Transportation Board (the Board or STB).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Through this Notice of Proposed Rulemaking (NPR), the Board is proposing a rule establishing additional disclosure requirements for notices and petitions for exemption where the underlying lease or line sale includes an interchange commitment.

DATES: Comments are due by December 3, 2012. Reply comments are due by January 2, 2013.

ADDRESSES: Comments and replies may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's website, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: EP 714, 395 E Street, S.W., Washington, DC 20423-0001. Copies of written comments and replies will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's website.

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language in Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

FOR FURTHER INFORMATION CONTACT: Amy C. Ziehm at (202) 245-0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION: Interchange commitments are “contractual provisions included with a sale or lease of a rail line that limit the incentive or the ability of the purchaser or tenant carrier to interchange traffic with rail carriers other than the seller or lessor railroad.”<sup>2</sup> Currently, if a proposed acquisition of a rail line involves an interchange commitment, the party filing the notice or petition for exemption must inform the Board that such a provision exists and must file a confidential, complete version of the document containing that provision with the Board.<sup>3</sup>

#### Historical Regulation of Interchange Commitments.

As a result of both the Railroad Revitalization and Regulatory Reform Act of 1976 and the Staggers Rail Act of 1980, it has become easier for rail carriers to abandon, sell, or lease a line or part of a line by utilizing exemptions from regulatory procedures. This flexibility has helped to revitalize the railroad industry. In 1998, the Board held two days of hearings to examine rail access and competition.<sup>4</sup> The issue of interchange commitments, or paper barriers, arose in the context of shortline railroads. Many of the transactions that created or built up these new shortline railroads contained interchange commitments.<sup>5</sup> The existence of these contractual restrictions encouraged large railroads to sell or lease lighter-density lines at reduced prices (in some cases at no cost), because they were guaranteed to retain a portion of the future revenues from the traffic on those lines. In many instances, they also provided a means of helping to finance the acquisition by shortline railroads. Interchange commitments took varying forms, including lease payment credits for cars interchanged with the seller or lessor carrier (in some instances the lease credit applied if the lessee interchanged with the lessor up to the same number of cars interchanged with the lessor in the prior year); monetary penalties for traffic interchanged with another railroad; or a total ban on interchange with any carrier other than the seller or lessor carrier.<sup>6</sup> Many reportedly had no fixed termination date.<sup>7</sup>

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<sup>2</sup> Review of Rail Access and Competition Issues—Renewed Petition of the W. Coal Traffic League, EP 575, slip op. at 1 (STB served Oct. 30, 2007). Interchange commitments are sometimes referred to as “paper barriers.”

<sup>3</sup> See 49 C.F.R. §§ 1121.3(d), 1150.33(h), 1150.43(h), and 1180.4(g)(4).

<sup>4</sup> Review of Rail Access and Competition Issues, EP 575 (STB served Apr. 17, 1998).

<sup>5</sup> Id. at 8.

<sup>6</sup> Review of Rail Access and Competition Issues—Renewed Petition of the W. Coal Traffic League, EP 575, slip op. at 4 (STB served Oct. 30, 2007).

In September 1998, the American Short Line and Regional Railroad Association and the Association of American Railroads entered into a Railroad Industry Agreement (RIA), which stipulated, among other things, that “[l]egitimate paper barriers are those that are designed as fair payment for the sale or rental value of the line that created the Short Line.”<sup>8</sup> In December 1998, the Western Coal Traffic League (WCTL) filed a petition for rulemaking asking the Board to adopt rules of general applicability regarding interchange commitments. The Board deferred action on WCTL’s petition in order to allow for industry experience under the RIA.<sup>9</sup>

In 2005, in response to a renewed petition filed by WCTL, the Board initiated a rulemaking proceeding to consider regulations restricting interchange commitment provisions included with a sale or lease of a rail line.<sup>10</sup> WCTL argued that interchange commitments were anticompetitive because they prevented lessee/purchaser railroads from offering shippers the full array of competitive routing options. WCTL asked the Board to establish a rebuttable presumption that such provisions are unreasonable and contrary to the public interest if they (a) last longer than five years, (b) include any financial penalty for interchanging traffic with another carrier, or (c) include a credit for interchanging traffic with the seller or lessor railroad that would provide a return in excess of the railroad industry’s cost of capital.<sup>11</sup> Upon receiving comments and conducting a public hearing, the Board declined to adopt a single rule of general applicability, deciding instead to consider the propriety of interchange commitments on a case-by-case basis.<sup>12</sup> The Board indicated that it would give especially close scrutiny to those interchange commitments that totally ban the lessee/purchasing railroad from interchanging with a third party carrier, and those commitments that were not time-limited.<sup>13</sup>

To facilitate its review of transactions that include interchange commitments, the Board proposed new disclosure requirements in 2007 to ensure appropriate advance regulatory scrutiny

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<sup>7</sup> Id.

<sup>8</sup> Railroad Industry Agreement § III, Paper Barriers (Sept. 10, 1998).

<sup>9</sup> Review of Rail Access and Competition Issues—Renewed Petition of the W. Coal Traffic League, EP 575, slip op. at 5-6 (STB served Oct. 30, 2007).

<sup>10</sup> See generally id.

<sup>11</sup> The cost of capital is the Board’s estimate of the average rate of return needed to persuade investors to provide capital to the freight rail industry. See Railroad Cost of Capital—2011, EP 558 (Sub-No. 15) (STB served Sept. 13, 2012).

<sup>12</sup> Review of Rail Access and Competition Issues—Renewed Petition of the W. Coal Traffic League, EP 575, slip op. at 13 (STB served Oct. 30, 2007).

<sup>13</sup> Id. at 15.

of sale and lease agreements containing interchange commitments,<sup>14</sup> and in May 2008, the Board formally adopted the proposed rules.<sup>15</sup> Thus, a purchaser or lessee railroad filing a notice or petition for exemption must advise the Board if the sale or lease contract includes an interchange commitment and must file a confidential, unredacted copy of that contract and any related documents containing the terms of the interchange commitment with the Board.<sup>16</sup>

Since its May 2008 decision adopting disclosure rules, the Board has reviewed 10 notices or petitions for exemption involving interchange commitments.<sup>17</sup> In the majority of these cases, the interchange commitment was styled as a lease credit for cars interchanged with the seller or lessor.<sup>18</sup> At least one, however, involved a total ban on interchanges with any other railroad.<sup>19</sup>

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<sup>14</sup> See generally id.

<sup>15</sup> Disclosure of Rail Interchange Commitments, EP 575 (Sub-No. 1) (STB served May 29, 2008).

<sup>16</sup> Id.

<sup>17</sup> Midwest Rail d/b/a Toledo, Lake Erie and W. Ry.—Lease & Operation Exemption—Norfolk S. Ry., FD 35634 (STB served June 29, 2012) (Mulvey, commenting); Progressive Rail—Lease & Operation Exemption—Rail Line of Union Pac. R.R., FD 35617 (STB served May 4, 2012) (Mulvey, dissenting); Middletown & N.J. R.R.—Lease & Operation Exemption—Norfolk S. Ry., FD 35412 (STB served Sept. 23, 2011) (Mulvey, dissenting); E. Penn R.R.—Lease & Operation Exemption—Norfolk S. Ry., FD 35533 (STB served July 15, 2011) (Mulvey, dissenting); C&NC R.R.—Lease Renewal Exemption—Norfolk S. Ry., FD 35529 (STB served July 1, 2011) (Mulvey, dissenting); Adrian & Blissfield R.R.—Continuance in Control Exemption—Jackson & Lansing R.R., FD 35410 (STB served Oct. 6, 2010) (Mulvey, dissenting); Jackson & Lansing R.R.—Lease & Operation Exemption—Norfolk S. Ry., FD 35411 (STB served Oct. 6, 2010) (Mulvey, dissenting); Jackson & Lansing R.R.—Trackage Rights Exemption—Norfolk S. Ry., FD 35418 (STB served Oct. 6, 2010) (Mulvey, dissenting); N. Plains R.R.—Lease Exemption—Soo Line R.R., FD 35382 (STB served Aug. 6, 2010) (Mulvey, dissenting); Wash. & Idaho Ry.—Lease & Operation Exemption—BNSF Ry., FD 35370 (STB served Apr. 23, 2010) (Mulvey, dissenting).

<sup>18</sup> Midwest Rail d/b/a Toledo, Lake Erie and W. Ry.—Lease & Operation Exemption—Norfolk S. Ry., FD 35634 (STB served June 29, 2012) (Mulvey, commenting); Progressive Rail—Lease & Operation Exemption—Rail Line of Union Pac. R.R., FD 35617 (STB served May 4, 2012) (Mulvey, dissenting); Middletown & N.J. R.R.—Lease & Operation Exemption—Norfolk S. Ry., FD 35412 (STB served Sept. 23, 2011) (Mulvey, dissenting); E. Penn R.R.—Lease & Operation Exemption—Norfolk S. Ry., FD 35533 (STB served July 15, 2011) (Mulvey, dissenting); C&NC R.R.—Lease Renewal Exemption—Norfolk S. Ry., FD 35529 (STB served July 1, 2011) (Mulvey, dissenting); Adrian & Blissfield R.R.—Continuance in Control Exemption—Jackson & Lansing R.R., FD 35410 (STB served Oct. 6, 2010) (Mulvey, dissenting); Jackson & Lansing R.R.—Lease & Operation Exemption—Norfolk S. Ry.,

(continued...)

The Board and interested parties have availed themselves of the information required in transactions containing interchange commitments. For instance, in four of those cases, third parties filed petitions to revoke the exemptions based on the interchange commitment.<sup>20</sup> In another case, the Board, on its own initiative, rejected the notice of exemption because the rail carrier had not filed a complete copy of the lease contract as required by our regulations.<sup>21</sup>

In this rulemaking, the Board proposes to require that additional information be provided in notices and petitions for exemption to include, among other things, specific details regarding the impact the interchange commitment will have on shippers and the purchaser or lessee railroad. The Board's goal is to ensure that both the agency and other interested parties have sufficient information to judge whether the exemption process is appropriate for a transaction. In particular, because the notice of exemption process involves very short deadlines, the Board proposes to require disclosure of information about the transaction at the time of the notice itself, rather than during any subsequent requests to reject or revoke the exemption.

The Proposed Rule: The Board proposes to revise its rules at 49 C.F.R. §§ 1121.3(d), 1150.33(h), 1150.43(h), and 1180.4(g)(4) to require that the filing party affirmatively disclose whether or not the underlying agreement contains an interchange commitment. The Board further proposes to revise those rules to require that the following information be included in notices and petitions for exemption involving an interchange agreement:

- (1) a list of shippers that currently use or have used the line in question within the last two years;
- (2) the number of carloads those shippers specified in paragraph (1) originated or terminated (submitted under seal);
- (3) a certification that the railroad has provided notice of the proposed transaction and

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FD 35411 (STB served Oct. 6, 2010) (Mulvey, dissenting); Jackson & Lansing R.R.—Trackage Rights Exemption—Norfolk S. Ry., FD 35418 (STB served Oct. 6, 2010) (Mulvey, dissenting).

<sup>19</sup> Wash. & Idaho Ry.—Lease & Operation Exemption—BNSF Ry., FD 35370 (STB served Apr. 23, 2010) (Mulvey, dissenting).

<sup>20</sup> Adrian & Blissfield R.R.—Continuance in Control Exemption—Jackson & Lansing R.R., FD 35410 (STB served Sept. 27, 2011) (Mulvey, dissenting); Jackson & Lansing R.R.—Lease & Operation Exemption—Norfolk S. Ry., FD 35411 (STB served Sept. 27, 2011) (Mulvey, dissenting); Jackson & Lansing R.R.—Trackage Rights Exemption—Norfolk S. Ry., FD 35418 (STB served Sept. 27, 2011) (Mulvey, dissenting); Middletown & N.J. R.R.—Lease & Operation Exemption—Norfolk S. Ry., FD 35412 (STB served Sept. 23, 2011) (Mulvey, commenting).

<sup>21</sup> Wash. & Idaho Ry.—Lease & Operation Exemption—BNSF Ry., FD 35370 (STB served Apr. 23, 2010) (Mulvey, dissenting).

- interchange commitment to the shippers identified in paragraph (1);
- (4) a list of third party railroads that could physically interchange with the line sought to be acquired or leased;
- (5) the percentage of the purchasing/leasing railroad's revenue projected to be derived from operations on the line with the interchange commitment (submitted under seal);
- (6) an estimate of the difference between the sale or lease price with and without the interchange commitment (submitted under seal);
- (7) an estimate of the discounted annual value of the interchange commitment to the Class I (or other incumbent carrier) leasing or selling the line (submitted under seal); and
- (8) a change in the case caption so that the existence of an interchange commitment is apparent from the case title.

The Board's goal is to encourage transactions that are in the public interest, while ensuring that it has sufficient information about transactions to determine whether they are appropriate for the exemption process or, on the other hand, raise competitive issues that require a more detailed examination. The Board has already indicated that interchange commitments that last in perpetuity or completely eliminate the ability of the lessee/purchaser railroad to interchange with a third-party carrier raise significant concerns. Long-term interchange commitments, often embodied in lengthy, renewable leases, also have the potential to control the competitive environment—thus affecting rates and service—for years to come. To this end, the Board believes that it will benefit the parties to the transaction, shippers, and the public for the Board to be provided with the above-outlined information simultaneously with the filing of a notice or petition for exemption. This additional information will aid the Board in its review of petitions for and notices of exemption and allow the Board to evaluate contracts involving interchange commitments without the delay involved with seeking additional information. Furthermore, parties objecting to a petition for exemption or those filing a petition to revoke an exemption will have access to this relevant information up front, thus minimizing the length of time spent on the process of filing and deciding a petition to revoke.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 601-612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. §§ 601-604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, § 603(a), or certify that the proposed rule would not have a "significant impact on a substantial number of small entities." § 605(b). The impact must be a direct impact on small entities "whose conduct is circumscribed or mandated" by the proposed rule. White Eagle Coop. v. Conner, 553 F.3d 467, 480 (7th Cir. 2009).

The regulations proposed here would affect railroads negotiating contracts that contain interchange commitments. As noted below, the Board estimates that a total of four respondents will be affected by these additional reporting requirements annually, and that the additional time required by each respondent is no more than eight hours. The Board believes that an additional eight hours in the context of putting together the relevant documents and filings does not create a significant impact. Moreover, as only four respondents per year will be affected, the proposed rule would not impact a substantial number of small entities.<sup>22</sup> Accordingly, pursuant to 5 U.S.C. § 605(b), the Board certifies that the regulations proposed herein would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

Paperwork Reduction Act. Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3549, and Office of Management and Budget (OMB) regulations at 5 C.F.R. § 1320.8(d)(3), the Board seeks comments regarding: (1) whether the collection of information as modified in the proposed rule and further described in Appendix B, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Information pertinent to these issues is included in Appendix B. The modified collection in this proposed rule will be submitted to OMB for review as required under 44 U.S.C. § 3507(d) and 5 C.F.R. § 1320.11.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

This rulemaking will affect the following subject: Parts 1121, 1150, and 1180 of title 49, chapter X, of the Code of Federal Regulations. It is issued subject to the Board's authority under 49 U.S.C. § 721(a).

It is ordered:

1. The Board proposes to amend its rules as set forth in this decision. Notice of the proposed rules will be published in the Federal Register.

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<sup>22</sup> The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of small business. See 13 C.F.R. § 121.201. The SBA has established a size standard for rail transportation, stating that a line-haul railroad is considered small if its number of employees is 1,500 or less, and that a shortline railroad is considered small if its number of employees is 500 or less. Id. (subsector 482).

2. Comments are due by December 3, 2012. Reply comments are due by January 2, 2013.

3. This decision is effective on the day of service.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman. Vice Chairman Mulvey commented with a separate expression.

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VICE CHAIRMAN MULVEY, commenting:

I commend the Board for proposing additional rules and soliciting comments regarding interchange commitment disclosures requirements. As explained in the decision, the goal of the proposed rules is to provide the Board and interested parties early access to a wide range of information regarding newly proposed interchange commitments. The impact of interchange commitments on competition remains a serious concern for many stakeholders. As we continue to grapple with questions raised by interchange commitments established decades ago, the Board must also be vigilant about the impact of any new restrictions on competition. In responding to the proposed rules, I hope that stakeholders will assist the Board in crafting a regime that provides appropriate scrutiny to transactions that have the potential to adversely impact competition.



## Appendix A

### Code of Federal Regulations

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend parts 1121, 1150, and 1180 of title 49, chapter X, of the Code of Federal Regulations as follows:

#### **PART 1121 – RAIL EXEMPTION PROCEDURES**

1. The authority citation for part 1121 continues to read as follows:

Authority: 49 U.S.C. 10502 and 10704.

2. Amend § 1121.3 by revising paragraphs (d) and (d)(1), and by adding paragraphs (d)(1)(iii), (d)(1)(iv), (d)(1)(v), (d)(1)(vi), (d)(1)(vii), (d)(1)(viii), (d)(1)(ix), and (d)(1)(x) to read as follows:

#### **§ 1121.3 Content.**

\* \* \* \* \*

##### *(d) Interchange Commitments.*

(1) The filing party must certify whether or not a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means (“interchange commitment”). If such a provision exists, the following additional information must be provided:

(i) \* \* \*

(ii) \* \* \*

(iii) a list of shippers that currently use or have used the line in question within the last two years;

(iv) the number of carloads those shippers specified in paragraph (iii) originated or terminated (submitted under seal);

(v) a certification that the railroad has provided notice of the proposed transaction and interchange commitment to the shippers identified in paragraph (iii);

(vi) a list of third party railroads that could physically interchange with the line sought to be acquired or leased;

(vii) the percentage of the purchasing/leasing railroad’s revenue projected to be derived from operations on the line with the interchange commitment (submitted under seal);

(viii) an estimate of the difference between the sale or lease price with and without the interchange commitment (submitted under seal);

(ix) an estimate of the discounted annual value of the interchange commitment to the Class I (or other incumbent carrier) leasing or selling the line (submitted under seal); and

(x) a change in the case caption so that the existence of an interchange commitment is

apparent from the case title.

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**PART 1150 – CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES**

3. The authority citation for part 1150 continues to read as follows:

Authority: 49 U.S.C. 721(a), 10502, 10901, and 10902.

4. Amend § 1150.33 by revising paragraphs (h) and (h)(1), and by adding paragraphs (h)(1)(iii), (h)(1)(iv), (h)(1)(v), (h)(1)(vi), (h)(1)(vii), (h)(1)(viii), (h)(1)(ix), and (h)(1)(x) to read as follows:

**§ 1150.33 Information to be contained in notice—transactions that involve creation of Class III carriers.**

(h) *Interchange Commitments.*

(1) The filing party must certify whether or not a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means (“interchange commitment”). If such a provision exists, the following additional information must be provided:

(i) \* \* \*

(ii) \* \* \*

(iii) a list of shippers that currently use or have used the line in question within the last two years;

(iv) the number of carloads those shippers specified in paragraph (iii) originated or terminated (submitted under seal);

(v) a certification that the railroad has provided notice of the proposed transaction and interchange commitment to the shippers identified in paragraph (iii);

(vi) a list of third party railroads that could physically interchange with the line sought to be acquired or leased;

(vii) the percentage of the purchasing/leasing railroad’s revenue projected to be derived from operations on the line with the interchange commitment (submitted under seal);

(viii) an estimate of the difference between the sale or lease price with and without the interchange commitment (submitted under seal);

(ix) an estimate of the discounted annual value of the interchange commitment to the Class I (or other incumbent carrier) leasing or selling the line (submitted under seal); and

(x) a change in the case caption so that the existence of an interchange commitment is apparent from the case title.

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5. Amend § 1150.43 by revising paragraphs (h) and (h)(1), and by adding paragraphs

(h)(1)(iii), (h)(1)(iv), (h)(1)(v), (h)(1)(vi), (h)(1)(vii), (h)(1)(viii), (h)(1)(ix), and (h)(1)(x) to read as follows:

**§ 1150.43 Information to be contained in notice for small line acquisitions.**

(h) *Interchange Commitments.*

(1) The filing party must certify whether or not a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means (“interchange commitment”). If such a provision exists, the following additional information must be provided:

(i) \* \* \*

(ii) \* \* \*

(iii) a list of shippers that currently use or have used the line in question within the last two years;

(iv) the number of carloads those shippers specified in paragraph (iii) originated or terminated (submitted under seal);

(v) a certification that the railroad has provided notice of the proposed transaction and interchange commitment to the shippers identified in paragraph (iii);

(vi) a list of third party railroads that could physically interchange with the line sought to be acquired or leased;

(vii) the percentage of the purchasing/leasing railroad’s revenue projected to be derived from operations on the line with the interchange commitment (submitted under seal);

(viii) an estimate of the difference between the sale or lease price with and without the interchange commitment (submitted under seal);

(ix) an estimate of the discounted annual value of the interchange commitment to the Class I (or other incumbent carrier) leasing or selling the line (submitted under seal); and

(x) a change in the case caption so that the existence of an interchange commitment is apparent from the case title.

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**PART 1180 – RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES**

6. The authority citation for part 1180 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 11 U.S.C. 1172; 49 U.S.C. 721, 10502, 11323-11325.

7. Amend § 1180.4 by revising paragraphs (g)(4) and (g)(4)(i), and by adding paragraphs (g)(4)(i)(C), (g)(4)(i)(D), (g)(4)(i)(E), (g)(4)(i)(F), (g)(4)(i)(G), (g)(4)(i)(H), (g)(4)(i)(I), and (g)(4)(i)(J) to read as follows:

**§ 1180.4 Procedures.**

(g) \* \* \*

(4) *Interchange Commitments.*

(i) The filing party must certify whether or not a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means (“interchange commitment”). If such a provision exists, the following additional information must be provided:

(A) \* \* \*

(B) \* \* \*

(C) a list of shippers that currently use or have used the line in question within the last two years;

(D) the number of carloads those shippers specified in paragraph (C) originated or terminated (submitted under seal);

(E) a certification that the railroad has provided notice of the proposed transaction and interchange commitment to the shippers identified in paragraph (C);

(F) a list of third party railroads that could physically interchange with the line sought to be acquired or leased;

(G) the percentage of the purchasing/leasing railroad’s revenue projected to be derived from operations on the line with the interchange commitment (submitted under seal);

(H) an estimate of the difference between the sale or lease price with and without the interchange commitment (submitted under seal);

(I) an estimate of the discounted annual value of the interchange commitment to the Class I (or other incumbent carrier) leasing or selling the line (submitted under seal); and

(J) a change in the case caption so that the existence of an interchange commitment is apparent from the case title.

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**Appendix B**

**DESCRIPTION OF COLLECTION**

*Title:* Disclosure of Rail Interchange Commitments

*OMB Control Number:* 2140-0016

*STB Form Number:* None.

*Type of Review:* Revision of an approved collection.

*Respondents:* Noncarriers and carriers seeking an exemption to acquire (through purchase or lease) and/or operate a rail line, if the proposed transaction includes an interchange commitment.

*Number of Respondents:* Four.

*Estimated Time Per Response:* No more than eight hours.

*Frequency:* On occasion.

*Total Burden Hours* (annually including all respondents): 32 hours

*Total “Non-hour Burden” Cost:* None identified. Respondents may file the requested information electronically.

*Needs and Uses:* Under 49 U.S.C. § 10502, noncarriers and carriers may seek an exemption from the prior approval requirements of sections 10901, 10902, and 11323 to acquire (through purchase or lease) and operate a rail line. The collection of agreements with interchange commitments has facilitated the case-specific review of interchange commitments and the

Board's monitoring of their usage generally. The modifications proposed here will further ensure that the Board has sufficient information about these transactions to determine whether they are appropriate for the exemption process and will also help parties objecting to a petition for exemption or filing a petition to revoke an exemption by providing access to this relevant information up front, thus minimizing the length of time spent on the process of filing and deciding a petition to revoke.

*Retention Period:* Information in this report will be maintained in the Board's confidential file for 10 years, after which it is transferred to the National Archives.